



January 29, 2002

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-0424

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157859.

The City of Austin Civil Service Administrator (the "city") received a written request for the disciplinary files of three named city police officers. You state that no responsive information exists with regard to one of the officers, and that the responsive records regarding another officer will be released to the requestor.¹ You contend, however, that the disciplinary records of the third named officer are excepted from public disclosure pursuant to section 552.103 of the Government Code.

We note that this office has previously ruled on the extent to which the records at issue are subject to required public disclosure. *See* Open Records Letter No. 2001-6071 (2001). Therefore, assuming the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the city may withhold the information at issue, but only in accordance with Open Records Ruling No. 2001-6071 (2001).² *See* Open Records Decision No. 673 (2001).

¹We note that a governmental body has only a good faith duty to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990).

²The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

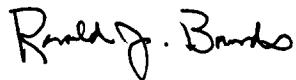
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/sdk

Ref: ID# 157859

Enc: Submitted documents

c: Mr. Jonathan Osborne
Austin American-Statesman
305 S. Congress Avenue
Austin, Texas 78704
(w/o enclosures)